

Message Text

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PAGE 01 NAIROB 08390 011551Z

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ACTION AF-18

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E.O. 11652: N/A

TAGS: BDIS, CPRS, KE, US, EAID

SUBJECT: SAUL/MILLER CASE AND U.S. AID TO KENYA

1. I AM BECOMING INCREASINGLY CONCERNED OVER POSSIBLE APPLICABILITY OF SECTION 620(E) OF FOREIGN ASSISTANCE ACT OF 1973 TO SAUL CASE. SAUL'S LAWYERS ARE CONVINCED THEY HAVE ABSOLUTELY IRONCLAD CASE PROVING THAT SAUL'S RIGHT TO MINE NGANGA CLAIM WAS ILLEGALLY NULLIFIED BY KENYAN AUTHORITIES. IF CASE IS INDEED IRONCLAD AND IF LAWYERS FORCED TO ABANDON CASE BY DEPORTATION(S) OF MEMBERS THEIR STAFF OR OTHER FORMS OF PRESSURE BY KENYAN AUTHORITIES RESULTING IN INABILITY TO OBTAIN LEGAL DETERMINATION ON CASE, WOULD SUCH ACTION REQUIRE PRESIDENT TO SUSPEND ASSISTANCE TO KENYA UNDER SECTION 620(E)(B)? WE UNDERSTAND SAUL AND MILLER TAKE THIS POSITION AND AT APPROPRIATE TIME WILL PROBABLY SEEK SUPPORT IN CONGRESS.

2. WHILE I AM FOR TACTICAL REASONS RELUCTANT TO TAKE ACTIONS WHICH MIGHT BE CONSTRUED AS "THREATS" WITH GOK, LEST WE PROVOKE FURTHER INTEMPERATE REACTIONS BY KENYATTA, I WOULD APPRECIATE GUIDANCE AS TO WHETHER DEPARTMENT BELIEVES I SHOULD BRING THIS LEGISLATIVE PROVISION TO ATTENTION OF GOK IN SOME APPROPRIATE FASHION. A LOW KEY WAY OF DOING THIS WOULD BE TO PROVIDE COPY OF LEGISLATION TO SAUL'S LAWYERS ON ASSUMPTION THAT THEY WOULD IN TURN BRING IT TO ATTENTION OF ATTORNEY GENERAL NJONJO.

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PAGE 02 NAIROB 08390 011551Z

HOWEVER, IF DEPARTMENT BELIEVES THERE IS REAL POSSIBILITY THAT

AN UNFAVORABLE DENOUEMENT OF SAUL CASE WILL TRIGGER U.S. AID
SUSPENSION, IT MIGHT BE PREFERABLE TO RUN RISK OF SEEMING TO
MWRA# THREATS BY ADVISING FINANCE MINISTER, FOREIGN MINISTER,
AND ATTORNEY GENERAL DIRECTLY.

3. PLEASE ADVISE ASAP, PARTICULARLY IN VIEW OF MOUNTING
PRESSURES BEING BROUGHT AGAINST LAWYERS WITH POSSIBLE EARLY GOK
ACTION WHICH WOULD HALT LEGAL PROCEDURES.

4. THIS CABLE HAS BEEN SHOWN TO USAID WHO DO NOT BELIEVE
THAT THIS PREVENTIVE MEASURE SHOULD BE TAKEN NOW WITHOUT FURTHER
SUBSTANTIATION OF FACTS OF CASE AS WELL AS DETERMINATION WHETHER
THE LEGAL PROCESS REMAINS OPEN TO SAUL/MILLER. USAID THINKS
THAT NO MATTER HOW PRESENTED GOK WILL CONSIDER OUR DRAWING
LEGISLATION TO ITS ATTENTION AS A THREAT WHICH WILL BE COUNTER-
PRODUCTIVE. I BELIEVE CONSIDERATION OF NECESSITY FOR PREVENTIVE
MEASURES MUST BE TAKEN AT THIS JUNCTURE; WHETHER I INFORM GOK
OF SECTION 620(E) AND HOW WILL BE DEPENDENT ON DEPARTMENT'S
GUIDANCE. NATURALLY METHOD AND TIMING ARE MATTERS OVER WHICH I
WOULD LIKE TO MAINTAIN DISCRETION.
MARSHALL

NOTE BY OCT: #AS RECEIVED.

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